Filed 3/5/12

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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| BADRUDIN KURWA,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>MARK B. KISLINGER et al.,<br><br>Defendants and Respondents. | B228078<br><br>(Los Angeles County<br>Super. Ct. No. KC045216) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Dan Thomas Oki, Judge. Reversed.

Robert S. Gerstein; J. Brian Watkins for Plaintiff and Appellant.

Harrington, Foxx, Dubrow & Canter, Dale B. Goldfarb, Carol G. Arnold for Defendants and Respondents.

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Plaintiff Badrudin Kurwa ("Dr. Kurwa"), on behalf of himself and derivatively on behalf of Trans Valley Eye Associates, Inc. ("Trans Valley"), sued defendant Mark B. Kislinger and his professional corporations (together, "Dr. Kislinger") for breach of fiduciary duty and defamation, and sought an accounting.[1] Dr. Kislinger cross-complained for defamation.

The trial court determined that Dr. Kislinger owed no fiduciary duty to Dr. Kurwa or to the corporation, and that Dr. Kurwa had no standing to sue Dr. Kislinger for breach of fiduciary duty or an accounting, and so dismissed those causes of action. After the parties voluntary dismissed without prejudice their causes of action for defamation, the trial court entered judgment in favor of Dr. Kislinger, from which Dr. Kurwa appeals.

We first determine that the judgment entered was final, notwithstanding that the defamation claims had been dismissed without prejudice. We then conclude that the court erred in ruling that Dr. Kurwa could not establish a fiduciary duty on the part of Dr. Kislinger, and that he lacked standing to prosecute this action. Consequently, we reverse the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND[2]

Prior to 1992, Drs. Kurwa and Kislinger each maintained his own ophthalmology/ optometry medical practice in the San Gabriel Valley and were not affiliated in any way. In 1992, a third party, Dr. Reginald Friesen, introduced the doctors and proposed that they create a joint venture in order to enter into and perform "capitation agreements." That is to say, the HMOs would pay the joint venture a monthly per capita fee, based on

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[1] The operative Second Amended Complaint included additional defendants and causes of action which are not before us on this appeal.

[2] The ruling below was in the nature of a judgment on the pleadings. That is to say, the trial court ruled that even if the factual allegations of the complaint were true, Dr. Kurwa could not, as a matter of law, recover damages from Dr. Kislinger for breach of fiduciary duty. Thus, this statement of facts is based onto the well-pleaded factual allegations of the complaint.

the number of participating members of the HMO, in consideration for the joint venture's agreement to provide the HMOs' members ophthalmology and optometry services. At the time, this was a novel arrangement for the provision of medical services through HMOs.

Drs. Kurwa and Kislinger agreed that they would together pursue this new business model. They signed a handwritten "Agreement between Bud and Mark" in which they outlined the structure within which they would jointly solicit the capitation business and share its profits. They agreed to incorporate a professional medical corporation to operate their joint venture business. Thus, Trans Valley was formed. Unfortunately, the Articles of Incorporation of Trans Valley did not "contain a specific statement that the corporation is a professional corporation" as required by Corporations Code section 13404. Consequently, Trans Valley was in fact not a professional medical corporation, but simply a general, for-profit corporation. (See Corp. Code, § 200.)

The joint venture entered into several capitation agreements, which served approximately 200,000 participating patients in three health maintenance organizations in the San Gabriel Valley and environs (the "HMOs"). From 1992 through 2003, Trans Valley provided ophthalmology services through three HMOs, earning revenues in the neighborhood of $2 million in the year prior to the joint venture's demise.

By an order of the California Medical Board, Dr. Kurwa was suspended from the practice of medicine for 60 days beginning on September 26, 2003, and was placed on five years' probation. Shortly thereafter, Dr. Kislinger effectively ended the joint venture. After consulting with his attorney, the latter wrote a letter on Dr. Kislinger's behalf (the "Solicitation Letter"), addressed to the president of Physician Associates of the Greater San Gabriel Valley ("Physician Associates"), the largest of the HMOs to contract with Trans Valley. We quote the letter in full:

> "This office represents Mark Kislinger, M.D. We are writing to you on his behalf on a matter that involves the continuity of patient care.
>
> "At the present time, there exists a provider agreement between Physician Associates and Trans Valle[y] Eye Associates. As you know, one of the two co-

owners of Trans Valley, Dr. Badrudin Kurwa has had his license to practice medicine suspended in the State of California. Pursuant to the agreement between you and that entity, his participation in the provider agreement is automatically terminated. Moreover, we believe the corporate status of Trans Valley is inappropriate for the practice of medicine.

"To solve these problems, we have formed a new appropriate medical corporation for Dr. Kislinger. This new corporation will hire substantially all of the employees and will contract physicians of the previous entity, so there will be no interruption of services to patients or any noticeable change to anyone. To facilitate this transfer, we would request that PA transfer its provider agreement from Trans Valley to Mark Kislinger, M.D., Inc. Dr. Kurwa, because of his suspension, will not be a part of the new corporation.

"We would appreciate having the transfer take place as soon as possible to maintain continuity and quality of patient care, and to avoid any improper entanglement with Dr. Kurwa, whose license is suspended at the present time.

"I would appreciate discussing this matter with you to effectuate this change as smoothly as possible. Your cooperation is appreciated."

Physician Associates responded by giving Trans Valley 30-days notice that it was terminating their capitation agreement because Trans Valley was not a licensed medical corporation. Physician Associates then awarded an exclusive capitation agreement to Dr. Kislinger's new medical corporation.

In 2004, Dr. Kurwa filed suit against Dr. Kislinger, alleging that the foregoing conduct on the part of Dr. Kislinger constituted, among other things, a violation of the latter's fiduciary duties to Dr. Kurwa and to Trans Valley, and seeking an accounting of his interest in the joint venture. Dr. Kurwa also sued Physician Associates for breach of

the capitation contract.[3] Physician Associates won summary judgment based on the undisputed fact that Trans Valley was not incorporated as a professional medical corporation pursuant to the Moscone-Knox Professional Corporation Act (Corp. Code, § 13400 et seq.). In affirming that judgment, we ruled that the effect of Trans Valley's failure to comply with Corporations Code provisions concerning professional medical corporations was to render its agreement to provide medical services to Physician Associates a violation of the ban on the corporate practice of medicine contained in Business and Professions Code section 2400. The capitation agreement was therefore void *ab initio*, and Trans Valley could not maintain its lawsuit against Physician Associates for breach of contract.

Prior to the commencement of trial on the remaining causes of action against Dr. Kislinger, the latter filed several motions in limine. He sought to preclude the introduction of certain evidence at trial, including evidence with respect to Dr. Kislinger's fiduciary duty, the capitation agreement between Trans Valley and Physician Associates, the handwritten notes dated July 1992 signed by Drs. Kurwa and Kislinger regarding the creation of their joint venture, and an additional 1997 writing concerning the doctors' further understanding regarding the terms of the joint venture. The trial court granted these motions, based on its conclusions that (1) because the doctors created a corporation to carry on the capitation business, they did not owe each other a fiduciary duty as partners or joint venturers, and thus Dr. Kurwa's cause of action for breach of fiduciary duty failed as a matter of law; and (2) because Trans Valley was not properly formed as a medical corporation, it could not sue, derivatively through its shareholder Dr. Kurwa, for breach of fiduciary duty. The court also ruled that the capitation agreements between Trans Valley and the HMOs were not admissible based on this court's ruling that they were void *ab initio*, and that the handwritten notes containing the doctors' original joint

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[3] In addition, Dr. Kurwa sued Dr. Kislinger's attorneys for tortious inference with contractual relations based on the Solicitation Letter. The attorneys filed an anti-SLAPP motion, which the trial court denied. We affirmed that ruling in a published opinion, *Kurwa v. Harrington, Foxx, Dubrow & Canter* (2007) 146 Cal.App.4th 841.

venture agreement were irrelevant and therefore inadmissible, since the joint venture was later incorporated.

Based on those rulings, Dr. Kurwa conceded that he could not proceed on his derivative and individual causes of action for breach of fiduciary duty, nor for an accounting based on such a breach, and the trial court dismissed those three causes of action. Dr. Kurwa also abandoned his causes of action for fraud, breach of contract, and breach of the contractual duty of good faith and fair dealing, and noted that his cause of action for removal of a director was moot. The court dismissed these causes of action with prejudice, "based upon plaintiff's lack of a desire to pursue [them] at this period of time." The doctors orally agreed to dismiss their causes of action for defamation without prejudice and to waive the applicable statute of limitations, which dismissal the court entered on the record. The court subsequently entered judgment in favor of Dr. Kislinger, from which Dr. Kurwa appeals.

## APPEALABILITY OF JUDGMENT

Dr. Kislinger contends that the dismissal without prejudice of the parties' defamation causes of action, coupled with a waiver of the statute of limitations, renders the judgment interlocutory, as it leaves open the possibility that the parties may litigate those claims in the future. We do not agree, as we explain.

"[T]here can be but one judgment in an action no matter how many counts the complaint contains." (*Bank of America v. Superior Court* (1942) 20 Cal.2d 697, 701, quoted with approval in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 738 ("*Morehart*").) Code of Civil Procedure section 904.1, subdivision (a), codifies this "one final judgment" rule: "[T]hat subdivision authorizes appeal '[f]rom a judgment, except . . . an interlocutory judgment,' i.e., from a judgment that is not intermediate or nonfinal but is the one final judgment. (*Knodel v. Knodel* [(1975)] 14 Cal.3d 752, 760.) Judgments that leave nothing to be decided between one or more parties and their adversaries, or that can be amended to encompass all controverted issues, have the finality required by section 904.1, subdivision (a). A judgment that disposes of *fewer*

than all of the causes of action framed by the pleadings, however, is necessarily 'interlocutory' (Code Civ. Proc., § 904.1, subd. (a)), and not yet final, as to any parties between whom another cause of action remains pending." (*Morehart, supra,* 7 Cal.4th at pp. 740-741, italics in original.)

In *Morehart, supra,* 7 Cal.4th 725, a land use case, the trial court ordered the causes of action for a writ of mandate, declaratory relief and injunctive relief to be tried separately from the causes of action seeking damages for inverse condemnation and violation of civil rights. A trial of the first three causes of action resulted in a proposed statement of decision in favor of the landowner, and called for the entry of a judgment for a writ of mandate and declaratory relief. The landowner objected to entry of judgment before the determination of the remaining of causes of action. The trial court overruled the objection, stating that "'[i]t makes no sense to get involved in a protracted trial on various damage claims without obtaining a final resolution on the issue of the validity of the County's ordinance.'" (*Morehart, supra,* 7 Cal.4th at p. 736.) The County appealed the judgment, grounding its appealability in the fact that it resolved issues that had been ordered to be tried separately, which were separate and independent from the issues remaining to be tried. A line of appellate cases, starting with *Schonfeld v. City of Vallejo* (1975) 50 Cal.App.3d 401 ("*Schonfeld*"), had indeed declared just such an exception to the one final judgment rule.

The *Morehart* court overruled *Schonfeld, supra,* 50 Cal.App.3d 401: "[W]e hold that an appeal cannot be taken from a judgment that fails to complete the disposition of all the causes of action between the parties even if the causes of action disposed of by the judgment have been ordered to be tried separately, or may be characterized as 'separate and independent' from those remaining." (*Morehart, supra,* 7 Cal.4th at p. 743.) Thus, *Morehart* stands for the straightforward proposition that the parties may not appeal adjudicated claims or issues while unadjudicated claims remain pending in the trial court. Thus, if at the time a judgment is entered there are causes of action remaining to be adjudicated in the trial court, over which that court has jurisdiction, the judgment is not final. Another way of expressing this concept would be: If the trial court continues to

have jurisdiction over any cause of action, the judgment entered is not final, for a final judgment disposes of all causes of action before the trial court, divesting that court of jurisdiction.

We apply this rule to the facts before us. After Dr. Kurwa indicated that he was not able to proceed to trial given the court's rulings on Dr. Kislinger's motions in limine, the trial court stated that "the action is dismissed with prejudice, except for the 11th cause of action, which the parties have agreed would be dismissed without prejudice." The court also dismissed without prejudice, pursuant to the parties' agreement, Dr. Kislinger's cross-complaint for defamation. These voluntary dismissals were authorized by Code of Civil Procedure section 581, subdivisions (b)(1) and (c),[4] which "allow[] a plaintiff to voluntarily dismiss, with or without prejudice, all or any part of an action before the 'actual commencement of trial.' (§ 581, subds. (b)(1), (c).)" (*Gogri v. Jack in the Box Inc.* (2008) 166 Cal.App.4th 255, 261.) "Apart from certain . . . statutory exceptions, a plaintiff's right to a voluntary dismissal [before commencement of trial pursuant to section 581] appears to be absolute. [Citation.] Upon the proper exercise of that right, a trial court would thereafter lack jurisdiction to enter further orders in the dismissed action." (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 784.)

The trial court entered judgment on August 23, 2010, stating: "Good cause appearing, it is hereby ordered, adjudged and decreed that plaintiff Badrudin Kurwa, shall take nothing by reason of his Complaint herein and that Judgment shall enter in favor of defendant and cross-complainant, Mark Kislinger, and defendants Mark B. Kislinger, Ph.D., M.D., Inc. and Mark Kislinger, M.D., Inc. and against Plaintiff Badrudin Kurwa." On its face, this is a final, appealable judgment. Each cause of action was adjudicated,

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[4] Section 581 provides in pertinent part: "(b) An action may be dismissed in any of the following instances: [¶] (1) With or without prejudice, upon written request of the plaintiff to the clerk, filed with papers in the case, or by oral or written request to the court at any time before the actual commencement of trial, upon payment of the costs, if any. [¶] . . . [¶] (c) A plaintiff may dismiss his or her complaint, or any cause of action asserted in it, in its entirety, or as to any defendant or defendants, with or without prejudice prior to the actual commencement of trial."

and there is nothing to be decided in the trial court. Unlike the trial court in *Morehart*, the court below no longer had jurisdiction in this matter.

We acknowledge that a line of appellate opinions, beginning with *Don Jose's Restaurant, Inc. v. Truck Insurance Exchange* (1997) 53 Cal.App.4th 115, reaches a different conclusion on similar facts. (See *Jackson v. Wells Fargo Bank* (1997) 54 Cal.App.4th 240; *Four Point Entertainment, Inc. v. New World Entertainment, Ltd.* (1997) 60 Cal.App.4th 79; *Hill v. City of Clovis* (1998) 63 Cal.App.4th 434; *Hoveida v. Scripps Health* (2005) 125 Cal.App.4th 1466.) These cases hold that a cause of action dismissed without prejudice remains "pending" within the meaning of *Morehart*. *Don Jose's Restaurant v. Truck Insurance Exchange, supra,* characterized the dismissed causes of action as existing "in a kind of appellate netherworld" (53 Cal.App.4th at p. 118), while *Hill v. City of Clovis, supra,* described them as "undecided and legally alive." (63 Cal.App.4th at p. 445.) Accordingly, these cases hold that a judgment entered following a dismissal without prejudice is not final, and the orders of the trial court subsumed in the interlocutory judgment are not appealable unless and until the dismissed causes of action are subsequently revived and adjudicated on the merits. (*Id.* at p. 446.)

We interpret the term "pending" more narrowly. In our view, a cause of action is pending when it is filed but not yet adjudicated. Such was the case in *Morehart, supra,* 7 Cal.4th 725. The Supreme Court there held that the judgment was not final because the trial court which entered it continued to have jurisdiction over additional causes of action pending before it. While a cause of action which has been dismissed may be pending "in the appellate netherworld," it is not pending in the trial court, or in any other court, and thus cannot fairly be described as "legally alive." We conclude that, because no causes of action remained to be tried in the court which entered judgment in favor of Dr. Kislinger, and indeed that court had no jurisdiction to do anything except enter judgment, the judgment entered is final.

## STANDARD OF REVIEW

As noted above, Dr. Kurwa's lawsuit was dismissed as a result of the trial court's legal conclusion that, based on the allegations of the complaint, he had no standing to sue, and that Dr. Kislinger owed him no fiduciary duty. Consequently, we review the rulings de novo, giving the complaint a reasonable interpretation, and accepting as true all material facts properly pleaded. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967; accord, *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

## DISCUSSION

In its motions in limine, Dr. Kislinger maintained that, as a consequence of our ruling in the earlier appeal of the dismissal of Physician Associates, "Dr. Kurwa's 1992 and 1997 agreements with Dr. Kislinger [which] also stated that Trans Valley was to provide medical services . . . were also void *ab initio*, pursuant to law of the case." Dr. Kislinger argued that, because all of Dr. Kurwa's causes of action against him were based on one of these two agreements, he had no standing to bring any actions against Dr. Kislinger, either individually or derivatively on behalf of Trans Valley.

Initially, we reject the argument that the law of the case has any application to the issues presented on this appeal. The sum and substance of our holding in the prior appeal was simply that, for the reasons stated, Trans Valley could not enforce the capitation agreement against Physician Associates. Dr. Kurwa is not attempting to enforce the capitation agreement against Dr. Kislinger.

Dr. Kislinger's suggestion that the writings between the doctors evidencing the terms of their joint venture were void *ab initio* based on the law of the case is without merit. When entering the joint venture, the parties did not, as Dr. Kislinger avers, have "an unlawful purpose, namely to provide Trans Valley with payments for medical services." Rather, they had the lawful purpose, as licensed physicians, to establish a professional medical corporation to carry out the joint venture's capitation business.

The gist of Dr. Kurwa's complaint against Dr. Kislinger is that the two formed a joint venture to exploit the market for HMO ophthalmology capitation agreements in the

San Gabriel Valley, and that, in causing his attorneys to send the Solicitation Letter to Physician Associates, Dr. Kislinger unilaterally terminated the joint venture and appropriated to himself, without any compensation to Dr. Kurwa, the very successful business which had been conducted by the joint venture for the prior 11 years. The fact that the doctors chose to conduct the joint venture in corporate form, and that they failed to include in the Articles of Incorporation the particular language which was required to create a professional medical corporation in compliance with Corporations Code section 13400 et seq., has no bearing on the question of whether Dr. Kislinger must account to Dr. Kurwa for appropriating the latter's equity interest in the joint venture.

As Dr. Kislinger acknowledges, joint venturers, like partners, have a fiduciary duty to act with the highest good faith towards each other regarding the affairs of the joint venture. (*Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 524.) Relying on *Persson v. Smart Inventions* (2005) 125 Cal.App.4th 1141, Dr. Kislinger simply argues that, because the doctors chose to conduct the joint venture as a corporation, they did not owe each a fiduciary duty.

In *Persson v. Smart Inventions, supra,* two individuals began a business as partners. The venture was a success, and after several years, they incorporated the business, each partner receiving 50 percent of the shares and acting as directors and officers of the corporation. Several years thereafter, the two decided to terminate their relationship, and did so through a stock purchase agreement. The selling shareholder later claimed that the buying shareholder had concealed material facts regarding the corporation's prospects, facts which he was obligated to disclose based on his fiduciary duty to his partner. The Court of Appeal rejected this argument, stating: "We are persuaded that, in the usual case and in this case, a partnership does not continue to exist after the formation of a corporation." (*Id.* at p. 1157.)

This is not "the usual case" as described in *Persson v. Smart Inventions.* In that case, as well as in the cases upon which it relied (*Cavasso v. Downey* (1920) 45 Cal.App. 780; *Kloke v. Pongratz* (1940) 38 Cal.App.2d 395 ), individuals who originally conducted business as a partnership, and thereafter incorporated the partnership business, were

deemed to no longer be partners. We have no quarrel with the general proposition that, when persons conducting business as a partnership decide to incorporate the business, the partnership does not continue to exist after the formation of the corporation.

However, such were not the facts alleged in the second amended complaint. First, Drs. Kurwa and Kislinger were never partners. Rather, prior to 1992, the two doctors conducted the business of medicine independently of each other, not in partnership together. In 1992, they undertook a new venture separate from their ongoing medical practices – to provide medical services to HMO patients under capitation agreements. The fact that they chose to conduct their joint venture in corporate rather than partnership form does not change the fact that they were joint venturers. (*Elsbach v. Mulligan* (1943) 58 Cal.App.2d 354, 370.)

In *Elsbach*, two individuals, Elsbach and Mulligan, formed a joint venture, which they later incorporated, to import and sell alcoholic beverages by creating exclusive agencies with producers. The corporation issued shares of stock to the two principals. Mulligan induced two producers to terminate their agency agreements with the corporation and to award exclusive agencies to him personally. Elsbach, in his personal capacity, sued Mulligan in tort and recovered damages. (*Elsbach v. Mulligan, supra,* at pp. 356-361, 366.) The Court of Appeal affirmed the judgment, concluding that the evidence supported the findings that the corporation was in reality a joint venture and that Elsbach and Mulligan acted throughout as joint venturers. The Court of Appeal rejected the argument that the action should have been brought by the corporation, holding that Elsbach personally could recover damages from Mulligan for breach of his fiduciary duty to his co-venturer. (*Id.* at pp. 368–370.) Courts in other states have likewise recognized that joint venturers may choose to operate their venture in the corporate form without divesting themselves of the rights and obligations of joint venturers. (See, e.g., *Richbell Info. Servs. v. Jupiter Partners* (2003) 765 N.Y.S.2d 575, 585; *Yoder v. Hooper* (Colo.App. 1984) 695 P.2d 1182, 1187-1188; *Jolin v. Oster* (Wis. 1969) 172 N.W.2d 12, 17; *Campbell v. Campbell* (Kan. 1967) 422 P.2d 932, 941.)

Here, the complaint alleges that Drs. Kurwa and Kislinger formed a joint venture to provide medical services to HMO patients by entering into capitation agreements with local medical groups. The doctors incorporated the joint venture, and issued shares of stock to the two principals. Dr. Kislinger induced the HMOs to terminate their contracts with the corporation and to enter into capitation agreements exclusively with his medical corporation. These facts state a cause of action for breach of fiduciary duty owed by one joint venturer to another.

Moreover, unlike the plaintiff in *Elsbach v. Mulligan, supra,* 58 Cal.App.2d 354, Dr. Kurwa did not sue solely in his individual capacity, but derivatively on behalf of Trans Valley. In Trans Valley's cause of action for breach of fiduciary duty, the complaint alleged that Dr. Kislinger misappropriated assets of the corporation in breach of his fiduciary duties as a director. "It is without dispute that in California, corporate directors owe a fiduciary duty to the corporation and its shareholders and now as set out by statute, must serve 'in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders.' (Corp. Code, § 309, subd. (a).)" (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1037.) Dr. Kurwa maintains that Dr. Kislinger was obliged to correct the formal defects which precluded the corporation from practicing medicine; that is, to amend Trans Valley's Articles of Incorporation to include the statement required by Corporations Code section 13604, and to register the corporation with the California Medical Board, and that his failure to do so damaged Trans Valley. These allegations state a derivative cause of action on behalf of Trans Valley, which Dr. Kurwa is entitled to pursue on behalf of the corporation. (Corp. Code, § 800.)

In short, because the factual allegations of the complaint state a cause of action against Dr. Kislinger for breach of fiduciary duty, the trial court erred in dismissing Dr. Kurwa's lawsuit based on the absence of a fiduciary duty on the part of Dr. Kislinger.

Finally, Dr. Kislinger cites the California Code of Regulations which provides that "Where there are two or more shareholders in a professional corporation and one of the

shareholders [¶] . . . [¶] [b]ecomes a disqualified person[5] as defined in Section 13401(d) of the Corporations Code[, h]is or her shares shall be sold and transferred to the corporation, its shareholders or other eligible licensed persons on such terms as are agreed upon." (16 Cal. Code Reg., § 1345(a)(2).) Dr. Kislinger contends that, even if he had resolved the defect in Trans Valley's corporate status as Dr. Kurwa contends he had a duty to do, upon the latter's suspension from the practice of medicine in September 2003, Dr. Kurwa was precluded from owning shares in any professional medical corporation during the period of his suspension: "the regs which we cited say he must give up his stock in a medical corporation, [and] has no right to get it back." That may be so, but that does not mean that Dr. Kislinger is not required to account to Dr. Kurwa for the latter's interest in the parties' joint enterprise. Indeed, due to Dr. Kislinger's alleged actions in abandoning the joint venture and appropriating its assets to his own benefit, Dr. Kurwa was deprived of the opportunity to sell his shares in Trans Valley to another eligible licensed person as contemplated by the cited regulation.

DISPOSITION

The judgment is reversed. Dr. Kurwa is to recover his costs of appeal.

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ARMSTRONG, Acting P. J.

I concur:

MOSK, J.

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5 A "disqualified person" is defined as "a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services that the particular professional corporation or foreign professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering." (Corp. Code, § 13401, subd. (e).)

KRIEGLER, J., Dissenting.

I respectfully dissent. The dismissal without prejudice and waiver of the statute of limitations on the cause of action for defamation leads to the inescapable conclusion the judgment did not dispose of the entirety of the action. Multiple authorities conclude that an appeal in the circumstances of this case violates the one judgment rule. (*Hoveida v. Scripps Health* (2005) 125 Cal.App.4th 1466, 1468-1469; *Hill v. City of Clovis* (1998) 63 Cal.App.4th 434, 442-445; *Four Point Entertainment, Inc. v. New World Entertainment, Ltd.* (1997) 60 Cal.App.4th 79, 83; *Jackson v. Wells Fargo Bank* (1997) 54 Cal.App.4th 240, 243-245; *Don Jose's Restaurant, Inc. v. Truck Ins. Exchange* (1997) 53 Cal.App.4th 115, 116-119.) There is no contrary authority supporting my colleagues' position on the issue of appealability. The appeal should be dismissed.

KRIEGLER, J.